

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to authority set forth in An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, as amended, approved April 14, 1906 (34 Stat. 114, ch. 1626; D.C. Official Code §6-711.01 *et seq.*), Article III of Reorganization Plan No. 1 of 1983, effective March 31, 1983 and Mayor's Order 83-92, effective April 7, 1983 (30 DCR 1872), hereby gives notice of the adoption of amendments to Title 14 of the District of Columbia Municipal Regulations (DCMR). These rules will amend Title 14, Chapter 8, Section 800, General Provisions of the DCMR, by adding Sections 800.8 through 800.23 establishing specific requirements for the removal of trash and weeds, and maintenance of grass, on private property. These rules also bring the maximum grass height level to 10 inches, in conformity with the maximum grass height provisions in the BOCA National Building Code. Notice of Proposed Rulemaking was published in the *D.C. Register* on May 9, 2003, at 50 DCR 3707. No comments were received and no changes have been made since the date of publication of the previous notice.

This rulemaking will become effective on the date of publication of this notice in the *D.C. Register*.

Title 14 DCMR (Housing) is amended as following:

CHAPTER 8 HOUSING CODE: CLEANLINESS, SANITATION AND SAFETY

Section 800 is amended by adding new subsections 800.08 through 800.23 as follows:

800 GENERAL PROVISIONS

- 800.08 The owner of any premises shall maintain the premises free of any condition that may render the premises unhealthy or unsanitary for the occupant, the neighborhood or the community at large pursuant to An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, approved April 14, 1906 (34 Stat. 114, ch. 1626; D.C. Official Code § 42-3131 *et seq.*).
- 800.09 Premises maintained in violation of this chapter create a danger to the health, welfare or safety of the occupants and public, and, constitute a public nuisance.
- 800.10 Excessive vegetative growth, including but not limited to, kudzu, poison ivy, plants with obnoxious odors, weeds, grasses causing hay fever, and any weed growth that creates a breeding place for mosquitoes, for a period of more than seven (7) calendar days is prohibited. Weeds may be defined

as, but are not limited to, poison ivy, poison oak, or poison sumac and all vegetation at any state of maturity which:

- a. Exceeds ten (10) inches in height, is untended, or creates a dense area of shrubbery that is a detriment to the health, safety and welfare of the public;
- b. Regardless of height, creates a harbor (including hiding places for persons), or a concealment for refuse or trash;
- c. Develops into deposits, or accumulation of, refuse or trash;
- d. Harbors rodents and vermin or provides a refuge for snakes, rats or other rodents;
- e. Creates an unpleasant or noxious odor;
- f. Constitutes a fire hazard; or
- g. Contains grass or weeds that are dead and diseased.

800.11 This chapter does not apply to weeds, grasses, or other vegetation, which is planted for agricultural use if such weeds, grasses or vegetation are, located at least one hundred fifty (150) feet from property zoned for non-agricultural use.

800.12 Nothing in this chapter shall prohibit an owner of any premises from maintaining healthy plants, grasses, or shrubbery in tended grounds, gardens, or landscape designed yards, which exceed ten (10) inches in height.

800.13 The accumulation of trash on any premises for more than seven (7) calendar days shall constitute an unsanitary and unhealthy condition if it creates a:

- a. Harbor or concealment (including hiding places for persons);
- b. Deposit or accumulation of refuse or trash;
- c. Harbor for rodents and vermin, or a refuge for snakes, rates or other rodents;
- d. Noxious or an unpleasant odor; or
- e. Fire hazard.

- 800.14 Owners shall be given a Notice of Violation for failure to comply with the provisions of this chapter.
- 800.15 The owner of the premises may give written consent to the Mayor or his designee authorizing the removal of trash or the mowing of weeds or grass pursuant to a Notice of Violation requiring abatement of a prohibited condition. By giving such written consent, the owner waives the right to an administrative hearing challenging the Mayor's action.
- 800.16 Pursuant to this chapter, the Mayor or his designee is authorized to take summary abatement action to correct a violation of this chapter where a condition exists that imminently endangers the health, safety or welfare of the occupant of the premises or the public.
- 800.17 If the owner of any premises is issued a Notice of Violation but fails to comply with the Notice of Violation, and another Notice is issued for the same condition during the same growing season, the District may summarily abate the nuisance.
- 800.18 The Notice of Violation shall state:
- a. The reason or reasons that support the Notice of Violation;
 - b. The need for the owner of the premises to comply with the requirements of the notice no later than seven (7) days after the date of receipt of the notice, unless within that time the notice has been appealed;
 - c. That the costs for such abatement shall be assessed against the owner of the premises and that failure to pay such costs may result in a lien being placed upon the premises without further notice to the owner.
- 800.19 Service of the Notice of Violation may be effected upon the owner of the premises by personal service, service by mail, or posting on the property or other means set out in 14 DCMR §§ 105-107 (1991).
- 800.20 Civil fines, penalties and fees may be imposed as an alternative sanction for any infraction of the provisions of this chapter, or of any rules or regulations issued under the authority of this chapter, pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this chapter shall be pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

- 800.21 If the Mayor or his designee must summarily abate a nuisance as set forth in this chapter, he or she is authorized to assess the fair market value of the correction or the actual costs of the correction, whichever is higher, and all expenses as a tax on the premises from which the condition arose as provided in the Act. The tax shall be carried on the District tax roll as a general tax.
- 800.22 Interest shall accrue on any unpaid bill at the rate of one and a half percent (1 ½ %) per month, or part thereof, from the date of the bill pursuant to D.C. Official Code § 47-1205(a).
- 800.23 The revolving fund established, pursuant to the Act (D.C. Official Code § 6-711.01(b)(1)) provides funding for the abatement of nuisances in the District, and for other purposes. Monies in the revolving fund shall be available to cover the cost of correcting nuisances and other incidentals that may arise in enforcing any action authorized by this chapter or the Act. Any amount assessed and collected as a tax against real property pursuant to this chapter shall be deposited to the credit of the revolving fund.

899 DEFINITIONS

- 899.1 The provisions of §199 of chapter 1 of this title and the definitions set forth in this section shall be applicable to this chapter. In addition, the following words and terms shall have the meanings ascribed in sections 800.08 through 800.23 of this chapter:

Growing Season – the time period from May 1st through October 31st of the same calendar year.

Summary Abatement – the process by which DCRA may remove a nuisance from any premises, as described in this chapter, at the expense of the owner and before an administrative hearing challenging the notice.

Untended Premises – premises that exemplify a lack a care, maintenance, or management in violation of the provisions of this chapter.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code § 47-2851.04, hereby gives notice of the adoption of the following amendments to chapter 4 of Title 16 of the District of Columbia Municipal Regulations (DCMR). Notice of Proposed Rulemaking was published in the D.C. Register on April 4, 2003 at 50 DCR 2608. The rulemaking amends chapter 4, Title 16 DCMR, Towing Service for Motor Vehicles, to establish the license fees for a towing business, a towing service storage lot, a towing vehicle, and for replacement licenses. No comments were received concerning these rules and no changes have been made since publication as a Notice of Proposed Rulemaking. These final rules will be effective upon publication of this notice in the D.C. Register.

**Chapter 4, Title 16 DCMR (Consumers, Commercial Practices & Civil Infractions)
(July 1998) is amended as follows:**

A new section 412 is added to read as follows:

412 LICENSING FEES

- 412.1 (a) The fee for a towing business license shall be \$775 per annum, payable biennially.
- (b) The fee for a towing service storage lot license shall be \$150 per annum, payable biennially.
- (c) The fee for a towing vehicle license shall be \$163 per annum, payable biennially.
- (d) The fee for replacing a lost or damaged towing related license shall be \$25.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of a new section 994 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Respite Care Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for respite care services provided by qualified professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for respite care services.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District that the maintenance and expansion of respite care services to persons with mental retardation and developmental disabilities is essential to the continuation of the Waiver. These rules establish standards governing the provision of respite care services.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on February 14, 2003 (50 DCR 1599). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice on the *D.C. Register*.

Amend Title 29 DCMR by adding the following new section 994, to read as follows:

SECTION 994 RESPITE CARE SERVICES

- 994.1 Respite care services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 994.2 Respite care services consist of services provided to a client on a short-term basis because of the absence or need for relief of the primary caregiver.
- 994.3 The two categories of respite care services are as follows:
- (a) Twenty-four (24) hour overnight services; and
 - (b) Hourly respite provided for a period less than 18 hours.

- 994.4 Respite care services eligible for reimbursement may be provided in the following settings:
- (a) An individual's home;
 - (b) A foster home;
 - (c) An intermediate care facility for persons with mental retardation;
 - (d) A group home;
 - (e) A licensed respite care facility;
 - (f) A community residential facility; or
 - (g) A place of residence other than a through f.
- 994.5 Respite care services shall not be reimbursed when provided by:
- (a) The client's caregiver;
 - (b) A member of the client's family; or
 - (c) A provider which is compensated for the general care of the client.
- 994.6 Providers of respite care services may be an adult unrelated to the client, including neighbors and friends of the client.
- 994.7 Respite care services shall not exceed seven hundred and twenty (720) hours or thirty (30) days per year. The date of the service authorization shall start the one-year period.
- 994.8 Respite care services shall be authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).
- 994.9 Each provider of respite care services shall:
- (a) Be a non-profit, home health agency, social service agency, or other business entity;
 - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for respite care services under the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver);
 - (c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
 - (d) Ensure that all respite care services staff are qualified and properly supervised;

- (e) Ensure that the service provided is consistent with the client's IHP or ISP;
- (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules; and
- (g) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor as set forth in 29 CFR 1910.1030.

994.10 Each person providing respite care services for a provider under 994.9 shall meet all the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the client;
- (c) Annually document that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the persons is free from communicable disease;
- (d) Be able to communicate with the client;
- (e) Be able to read and write the English language;
- (f) Meet the minimum training and qualifications of a personal care aide, as set forth in Chapter 50 of Title 29 DCMR or a homemaker as set forth in section 938 of Chapter 9 of Title 29 DCMR;
- (g) Complete pre-service training as defined by MRDDA, including training in the following areas:
 - (1) Resident rights;
 - (2) Provider responsibilities;
 - (3) Fire and safety;
 - (4) First aid;
 - (5) Nutrition and medication;
 - (6) Basic program techniques; and
 - (7) CPR.
- (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002, (D.C. Laws 12-238 and 14-98; D.C. Official Code § 44-551 et seq.) and implementing rules.

994.11 The billable unit of service shall be as follows:

- (a) One (1) hour of service, up to seventeen (17) hours per day; or
- (b) One day of service, eighteen to twenty-four hours.

994.12 The reimbursement rates for respite care services shall be as follows:

- (a) Twenty-eight dollars (\$28.00) per billable hour, per client that requires skilled nursing services delivered by a registered nurse; or
- (b) Twenty dollars (\$20.00) per billable hour, per client that requires skilled nursing services delivered by a licensed practical nurse; or
- (c) Thirteen dollars and fifty cents (\$13.50) per billable hour, per client that requires assistance activities of daily living one (1) to seventeen (17) hours per day; or
- (d) \$200.00 per billable day, per client that requires assistance with activities of daily living eighteen (18) to twenty-four (24) hours per day.

994.99 **DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

Activities of Daily Living-The ability to get in and out of bed, bathe, dress, eat out, take medication prescribed for self-administration and to engage in toileting.

Client- An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable Disease-Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Individual Habilitation Plan (IHP)-The plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, 7-1304.03).

Individual Support Plan (ISP)-The successor to the individual habilitation plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

Practical nurse-A person who is licensed or authorized to practice practical

nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code 3-1201 et seq.) or licensed as a practical nurse in the jurisdiction where services are provided.

Registered Nurse-A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code 3-1201 et seq.) or licensed as a registered nurse in the jurisdiction where services are provided.

Skilled Nursing Services-Health care services that are delivered by a registered or practical nurse acting within the scope of their practice as defined in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code 3-1201 et seq.) and implementing rules.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF FINAL RULEMAKING

The Interim Director of the Department of Human Services ("DHS"), pursuant to the authority set forth in Section 2 of the Interim Disability Assistance Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-252; D.C. Official Code § 4-204.07) as amended by Section 2(b) of the Interim Disability Assistance Emergency Amendment Act of 2003 ("2003 Act"), effective January 22, 2003 (D.C. Act 15-2; 50 DCR 1424) and Mayor's Order 2002-152, dated August 29, 2002, hereby gives notice of the adoption of the following amendment to Title 29 of the District of Columbia Municipal Regulations by adding a new Chapter 66 entitled "Interim Disability Assistance". The purpose of the rules is to establish guidelines for the Interim Disability Assistance (IDA) program that provides interim assistance to applicants who have applied for Supplemental Security Income (SSI) and are awaiting a determination.

Comments were received to the Emergency and Proposed Rules published in the D.C. Register on April 18, 2003, at 50 DCR 3081. No substantive comments were received. The following three (3) technical changes were made: (1) in subsection 6601.1 (b), to insert "as amended" at the end, (2) in subsection 6602.1 (d) (3), to delete "total" and insert "gross" in its place, and (3) in subsection 6604.4, to delete "these rules" and insert "this section" in its place.

These final rules will be effective upon publication of this notice in the D.C. Register.

Title 29 DCMR is amended by adding the following new Chapter 66.

CHAPTER 66 INTERIM DISABILITY ASSISTANCE**6600 PURPOSE**

- 6600.1 The Interim Disability Assistance (IDA) Program shall provide temporary financial assistance to disabled adults who are ineligible for Temporary Assistance for Needy Families (TANF) and who have applied for and are waiting approval of Supplemental Security Income (SSI). Approval of IDA shall be contingent on the availability of funds.
- 6600.2 If funds are exhausted at the time the individual is determined to meet all of the eligibility requirements, he or she shall be placed on a waiting list and approved when funds become available.
- 6600.3 The application processes shall be administered in accordance with the rules applicable to the Medicaid Program.
- 6600.4 The monthly grant shall be the same as that for a family size of one (1) or two (2) under the TANF Program as set forth in section 552 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.52(c)), as amended.

6601 ELIGIBILITY REQUIREMENTS

6601.1 An individual shall be eligible for IDA if he or she is:

- (a) A United States citizen; or
- (b) An alien who meets the alien eligibility requirements for SSI under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2260; 8 U.S.C. §§ 1601-1646), as amended;
- (c) A resident of the District of Columbia, as determined under § 503 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.3);
- (d) Financially in need, meets the following income and asset limits, and financial eligibility is verified:
 - (1) There is no gross income limit for the household. The household's net income is at least ten dollars (\$10) less than that the TANF payment level for a family of the same size;
 - (2) No earned income or unearned income deductions are allowed, when calculating a household's countable income. Income is deducted dollar-for-dollar from the payment level to determine the household's financial eligibility and benefit amount;
 - (3) The income of a spouse who lives with the applicant and is not included in the IDA household is deemed using the following formula: gross income of non-IDA spouse minus TANF payment level for one (1) person equals net income;
 - (4) The one (1) person household asset limit is two thousand dollars (\$2,000);
 - (5) The two (2) person household asset limit is three thousand dollars (\$3,000); and
 - (6) All liquid and non-liquid resources are countable for the purpose of determining IDA eligibility, except those excluded for SSI under Title 16, Section 1613 of the Social Security Act;
- (e) Ineligible for a category of cash assistance in which there is federal financial participation, except that an individual who has applied for

Social Security Disability Insurance (SSDI) or SSI may be eligible during the period that the SSDI or SSI application is being processed; and

- (f) Determined by the Department of Human Services (Department) to meet the definition of disability.

6601.2 For the purposes of this section, except as indicated, income means both earned and unearned income as defined for the SSI program in Title 16, Section 1612 of the Social Security Act. In addition, regular and presumptive SSI payments shall be counted and in-kind maintenance and support benefits shall be excluded when determining IDA eligibility.

6601.3 An individual may not receive assistance unless he or she does the following:

- (a) Applies to the Social Security Administration (SSA) for SSI benefits;
- (b) Signs an Interim Assistance Reimbursement Authorization form;
- (c) Provides a social security number or verification of application for a social security number; and
- (d) Cooperates with the Disability Entitlement Advocacy Program, which includes:
 - (1) Providing materials needed to pursue the SSI application such as medical reports;
 - (2) Keeping appointments with medical providers;
 - (3) Keeping appointment with his or her disability advocate;
 - (4) Keeping appointments with SSA and its representatives; and
 - (5) Participating in treatment programs, as required.

6601.4 Failure to cooperate with the Disability Entitlement Advocacy Program or the case manager may result in termination of IDA benefits, unless a good cause reason can be established for non-cooperation.

6601.5 Good cause for non-cooperation with case management shall include circumstances that are beyond the recipient's control such as, but not limited to, the following:

- (a) Personal illness;

- (b) Illness of another household member that requires the presence or care of the recipient; and
- (c) A household emergency such as a death in the family.

6602 APPLICATION PROCESS

- 6602.1 A qualified individual's eligibility for IDA benefits shall begin on the first of the month following the month that he or she applied for IDA or the month following the month in which his or her application for SSI was filed with the SSA, whichever is later.
- 6602.2 Each individual shall have the right to file an application for IDA on the same day that he or she contacts the Income Maintenance Administration (IMA).
- 6602.3 Each application for IDA shall be submitted in person by the applicant or his or her authorized representative at an IMA designated service center, using the Combined Application that is used to apply for multiple programs. The application shall be considered filed when it is on the prescribed form, contains a name and an address, unless the person is homeless, has a signature and a face-to-face interview is completed.
- 6602.4 Any individual or spouse of a married couple may file an application for IDA. The applicant may designate an authorized representative to act on his or her behalf.
- 6602.5 A face-to-face interview with the applicant or his or her authorized representative is required for all applications for IDA. During the application interview, the IMA Social Service Representative (SSR) shall:
- (a) Inform the applicant of his or her rights and responsibilities;
 - (b) Explain the program and related services;
 - (c) Outline the conditions of eligibility and indicate what verification and information are necessary to determine eligibility;
 - (d) Advise the applicant of the opportunity to register to vote;
 - (e) Notify the applicant that the information he or she provides will be matched by the computer with information from other local, state and federal agencies;
 - (f) Complete the Authorization for Reimbursement of Interim Assistance Form;

- (g) Complete SSA Form 1696-U4, Appointment of Representative, authorizing an IMA-designated organization to act as the applicant's representative to SSA;
 - (h) Issue medical report forms, as needed;
 - (i) Complete a social information form; and
 - (j) Explore and resolve any unclear or incomplete information.
- 6602.6 A final determination shall be made within sixty (60) days, counting from the day after the application was filed. If by the sixtieth (60th) day following the date of application, the applicant has not provided all verifications, the Department shall issue a denial notice and deny the application. An applicant shall be given an extension of up to fifteen (15) days to establish eligibility as stated in subsection 6603.2.
- 6602.7 If all financial and non-financial conditions of eligibility are met and funds are currently available, the Department shall approve the benefits.
- 6603 DENIAL OF APPLICATION**
- 6603.1 The application for IDA shall be denied if:
- (a) The applicant refuses to cooperate with the Income Maintenance Administration (IMA) in providing the information needed to determine eligibility;
 - (b) The conditions of non-financial eligibility have not been met;
 - (c) The income and/or assets exceed established limits;
 - (d) The application has been voluntarily withdrawn or abandoned; or
 - (e) The funding for the program is exhausted.
- 6603.2 An applicant shall be given an extension of up to fifteen (15) days to establish IDA eligibility under the following circumstances:
- (a) A determination of disability is pending with the Medical Review Team (MRT); or
 - (b) The MRT has found that additional information is needed to determine disability and the information cannot be provided by the sixtieth (60th) day.

6603.3 The applicant shall be notified of the denial, the reason for the denial, and his or her right to a fair hearing.

6604 DURATION OF BENEFITS

6604.1 A qualified individual's eligibility for IDA benefits shall end either at the end of the month in which SSA makes a final decision on the application for SSI benefits, if the SSA's decision is a denial of the application; or at the end of the month in which SSA begins payment of benefits, if the decision is favorable.

6604.2 For purposes of this section, the final decision of the SSA shall be the decision by the Appeals Council of the Office of Hearings and Appeals, or the denial by the Disability Determination Division or Administrative Law Judge, if the IDA recipient fails, without good cause, to file a timely appeal of that decision.

6604.3 If the decision of the Administrative Law Judge is a denial and an appeal is filed timely, the Department shall immediately make a determination whether to refer the IDA recipient for appropriate vocational rehabilitation services.

6604.4 If an IDA recipient requests a fair hearing to contest the termination of his or her IDA benefits, any IDA benefits paid pending the outcome of the hearing shall terminate as of the last month of the period of eligibility, as defined in this section, regardless of whether the fair hearing process is complete.

6605 PAYMENTS

6605.1 IDA benefits shall be issued through electronic benefit transfer (EBT) accounts.

6605.2 Rental vendor payments shall not be deducted from IDA benefits.

6606 DISABILITY REQUIREMENTS

6606.1 If an applicant for IDA has previously been determined by SAA not to satisfy the disability requirements for SSI, the Department shall evaluate disability in the same manner as under the Medicaid Program, as provided in 42 C.F.R. 435.541.

6606.2 An applicant shall be ineligible for IDA unless he or she:

- (a) Alleges a disabling condition different from, or in addition to, which is considered by SSA in making its determination;
- (b) Alleges more than twelve (12) months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Social Security

Act and has not applied to SSA for a determination with respect to these allegations; or

- (c) Alleges less than twelve (12) months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of SSA, and has applied to SSA for reconsideration or reopening of its disability decision.

6607 REPAYMENT OF BENEFITS

6607.1 For any month or period of months in which an IDA recipient receives both IDA and SSI, he or she shall repay to the District of Columbia:

- (a) The entire amount of the IDA payments received if the SSI benefits received for the same period equaled or exceeded the IDA payment; or
- (b) That portion of the IDA payments equal in amount to the SSI benefits received for the period if the SSI benefits received were less than the IDA payment.

6607.2 To make repayment, an IDA applicant shall sign an Interim Assistance Reimbursement Authorization form, which:

- (a) Permits SSA to send the individual's past due SSI benefit payment to the Department; and
- (b) Permits the Department to deduct from these payments an amount equal to the IDA benefits provided.

6607.3 Upon receipt of an IDA recipient's past-due SSI benefit, DHS shall calculate the amount of the benefit due to DHS as repayment and the amount, if any, due to the IDA recipient.

6607.4 The Department shall provide the IDA recipient with a written explanation of the calculation set forth in subsection 6607.3 and shall pay any amount due to the IDA recipient, in accordance with section 1631 of the Social Security Act, approved October 30, 1972 (86 Stat. 1475; 42 U.S.C. § 1382 (g)) and the SSA Interim Assistance regulations, 20 C.F.R. 416.1901-1922.

6607.5 If an IDA recipient is determined by SSA to meet the disability requirements for purposes of SSI eligibility but withdraws the SSI application prior to payment of the past-due benefits, the IDA benefits received by that individual shall be considered an overpayment and that individual shall be liable to the District for repayment of all IDA benefits received.

6608 RECERTIFICATION FOR BENEFITS; REINSTATEMENT

- 6608.1 An IDA recipient shall recertify for benefits within twelve (12) months of the month of the individual's approval and every twelve (12) months thereafter.
- 6608.2 The following eligibility requirements shall be redetermined and reverified at the IDA interview:
- (a) Residency;
 - (b) Income;
 - (c) Resources; and
 - (d) Status of the SSI claim.
- 6608.3 No IDA recipient shall be required to submit new medical information to continue IDA eligibility.
- 6608.4 If the IDA recipient provides all information needed to redetermine eligibility, confirming that he or she continues to meet all financial and non-financial requirements, the SSR shall recertify IDA benefits for an additional twelve (12) months.
- 6608.5 An IDA recipient shall report, within ten (10) days, any changes that affect his or her eligibility for benefits.
- (a) If any change results in an increase in the recipient's benefits, the SSR shall make the change for the following month; and
 - (b) If any change results in a decrease in the recipient benefits, the SSR shall make the change for the month following the fifteen (15) days notice of the intended reduction in benefits, except that if the recipient reports the approval of SSI benefits, the recipient's benefits may be changed for the following month.
- 6608.6 An IDA recipient may be reinstated for benefits if he or she provides by the effective date of closing, all information needed to re-establish eligibility.
- 6608.7 An individual who does not provide all needed information by the effective date of closing shall re-apply for IDA.
- 6608.8 At reapplication, the applicant shall verify all eligibility requirements and he or she shall provide current medical information if the Medical Review period has expired. Representation and reimbursement agreements shall also be resigned.

6608.9 If, at re-application, the applicant re-establishes eligibility but IDA funds are exhausted, the applicant shall be added to the waiting list, effective the date of reapplication.

6609 HEARING RIGHTS

6609.1 Any applicant or recipient who is dissatisfied with an action taken by the Department, which affects his or her IDA benefits, participation or requirements, shall have the right to request a fair hearing.

6609.2 The hearing process shall be conducted in accordance with rules established in D.C. Official Code § 4-210.01 *et seq*; except that, if a recipient requests continuation of benefits while the fair hearing is pending, benefits may not be continued after a final determination of SSI eligibility has been made.

6699 DEFINITIONS

6699.1 The following terms and phrases shall have the meanings ascribed:

“Applicant” - a person who is applying for Interim Disability Assistance and applying for benefits. He or she may assert eligibility for himself or herself or as the authorized representative of an applicant.

“Assistance Unit” - all individuals whose needs, income and resources are considered in determining eligibility for and the amount of, IDA assistance.

“Authorized Representative” - an adult who acts on behalf of another person in applying for, obtaining or using program benefits for Interim Disability Assistance

“Case Management Services” - services received by IDA households when assigned a disability advocate to assist them in the process of qualifying for SSI by acquiring and providing information to process the SSI claim, setting up necessary appointments, tracking the progress of the claim, and representing the household throughout the appeals process.

“Council” - the Council of the District of Columbia.

“Department” - the Department of Human Services of the District of Columbia or any successor organizational Unit (in whole or in part).

“Disability” - this term as defined at 20 CFR 416.905 shall have the same meaning as that employed by the Social Security Administration, which is the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not

less than twelve (12) months. To meet this definition, an applicant shall have a severe impairment that makes him or her unable to continue in his or her previous line of work or to perform any other substantial gainful activity, which exists in the national economy. Residual functional capacity, age, education, and work experience are all considered in making disability determinations.

“Disability Entitlement Advocacy Program” - the Income Maintenance Administration program that provides IDA case management and legal advocacy services in the SSI application and appeal process.

“District” - the District of Columbia Government.

“Earned Income” - income in cash or in kind that is produced as a result of the performance of services currently rendered by an individual.

“Fair Market Value” - the value at which an asset could be sold in the open market in a transaction between unrelated parties.

“Gross Income” - the total earned income before any deductions required by law.

“Impairment” - a deficiency, which results from anatomical, physiological or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms and laboratory findings not only by a statement of symptoms.

“Income” - earned or unearned money received by an individual that is of gain and benefit to the individual or assistance unit; and includes the following: salary, gross income from self-employment, training allowances, stipends or other payments for work experience (to the extent that they are countable as income pursuant to D.C. Official Code § 4-205.13 (a), District public assistance payments, federal public assistance payments (to the extent permitted by law), pensions, retirement benefits, annuities, unemployment compensation, worker’s compensation, or alimony payments made directly to a member of the assistance unit, interest, dividends scholarships, rent received from a tenant or lessee, and money that is required by the District or federal laws to be deemed from person who is not a member of the assistance unit. The term “income” does not include a non-recurring lump-sum payment (which shall be considered a resource); payments made by a government agency to a third party for child care, housing, or medical assistance; or any payment that is specifically excluded by federal or District law from consideration as income for the purpose of determining eligibility for public substantial assistance.

“Ineligible Spouse” - someone who lives with a person as a husband or wife and who is not eligible for SSI benefits.

“Interim Disability Assistance” – (IDA) a District of Columbia public assistance program for adults with disabilities who are waiting on a pending application for SSI benefits.

“Lump-sum Payment or Settlement” - a nonrecurring earned or unearned income including retroactive monthly payments and payments in the nature of a windfall.

“Mayor” - the Mayor of the District of Columbia or the agents, agencies, officers, and employees designated by him or her to perform any function vested in them by this chapter.

“Medical Review Team” - the administrative unit within the Income Maintenance Administration that adjudicated disability claims for federal medical assistance.

“Public Assistance” - payment in or by money, medical care, remedial care, goods or services to, or benefit of, needy persons.

“Recipient” - a person to whom or on whose behalf public assistance is granted.

“Representative Payee” - a person or organization selected by the Social Security Administration to receive benefits on behalf of a Old Age Survivors Disability insurance or Supplemental Security income recipient and obligated to use those benefits for the personal care and well-being

“Resident” - a person who is living in the District of Columbia voluntarily and not for a temporary purpose.

“Resources” - cash or other liquid assets or any real or personal property that a member of an assistance unit owns and could convert to cash to be used for support and maintenance.

“Residual Functional Capacity” - activities an applicant can perform despite any impairment and any related symptoms such as pain, physical or mental limitations.

“Social Security Administration” - the federal agency that administers Social Security Income (SSI) among other programs.

“Social Service Representative” - the IMA case manager who is responsible for processing the applicant’s Interim Disability Assistance application.

"Sponsor" - an individual who signs an affidavit of support agreeing to support a person as a condition of the person's admission as an alien for permanent residency in the United States. "Sponsor" does not include an organization such as the congregation of a church or service club, or an employer who only guarantees employment for a lien upon entry but does not sign an affidavit of support.

"Substantial Gainful Activity" - work activity that, as defined in 20 CFR 416.972, is both substantial and gainful:

- (a) Substantial work activity is work activity that involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if it represents a cutback, warrants less pay, or entails less responsibility than prior positions.
- (b) Gainful work activity is work activity that is done for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.
- (c) Generally, other activities like taking care of one's self, household tasks, hobbies, therapy, school attendance, club activities, or social programs are not considered substantial gainful activity.

"Supplemental Security Income" - the federal program for the aged, blind and disabled.

"TANF" - the Temporary Assistance for Needy Families Program.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Order No. 02-46
Z.C. CASE NO. 02-46
(Map Amendment – Parcel 0169/0111-3200 Benning Road, N.E.)**

The Zoning Commission for the District of Columbia, pursuant to its authority under Section 1 of the Zoning Act of 1938 (52 Stat. 797, as amended; D.C. Official Code 2001 Ed. § 6-641.01), hereby gives notice of the adoption of an amendment to the Zoning Map of the District of Columbia in the manner described below. The purpose of this rezoning was to map the site within the M Zone District. No changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the *D.C. Register* on April 11, 2003, at 50 DCR 2878. These final rules will be effective upon publication of this notice in the *D.C. Register*.

The Commission initiated this rulemaking in response to a petition from the District of Columbia Department of Public Works ("DPW"), submitted November 6, 2002. Prior to filing the petition, DPW filed an application for a special exception to expand and renovate the existing Benning Road Solid Waste Transfer Facility, operated by DPW. However, because there was no zoning designation for the subject property, the application was held in abeyance, as discussed in an October 23, 2002, letter from the Director of the Office of Zoning to DPW Office of the General Counsel.

The map amendment will establish a zoning designation for the subject property, which will allow DPW to apply for building permits for the renovation and expansion of the facility. DPW represents that the renovations will improve environmental conditions at the site.

Existing Zoning

The property, owned by the United States Government, with jurisdiction transferred to the District on October 7, 1969, is currently unzoned. Section 106.5 of the Zoning Regulations (Title 11) provides that, with respect to District government uses not located within the Central Area, "any change or expansion in the use of a building, or any new construction or additions to buildings shall be subject to zoning." Therefore, absent a zoning designation, there can be no significant upgrades to the existing DPW facility.

The property is surrounded on three sides by Anacostia Park. The land to the south, across Anacostia Ave., is located within both the M and C-M-1 (low-bulk commercial light manufacturing) Districts.

Description of Map Amendment

The amendment designates Parcel 0169/0111 of Reservation 343 as M, General Industry. The rulemaking also provides that the designation will expire two years from the effective date of the final order establishing such zoning. After that time, the property will revert to unzoned, unless further action is taken by the Zoning Commission.

Relationship to the Comprehensive Plan

The area in which the subject property is located has been identified on the Generalized Land Use Map of the Comprehensive Plan for parks, recreation, and open space. Whereas the existing use is not a precise fit for this identification, the land use map is generalized, intended to reflect the predominant uses in a general area (See Committee of the Whole Report on Bill 12-99). Thus, the land use map designation is not intended to prescribe the only uses that should be permitted in an area. In keeping with this, Section 112 of the Comprehensive Plan states that the Land Use Element is to be given greater weight than other elements, but should be "tempered or defined by one or more of the other elements" and that "District elements of the Plan should be studied and executed in concert with each other and should be interpreted broadly."

Therefore, the Commission, in reaching its decision in this case, looked beyond the Land Use Element to note that the area adjacent to the subject property is within the technical employment land use category, a category that largely accommodates the type of use contemplated. Further, a number of more specific portions of the Comprehensive Plan support limited upgrading and expansion of the current facility on the property. Section 404, Solid Waste Management, encourages the development of safe and effective methods for reducing collecting, recycling, and disposing of solid waste. Section 406, subsection (c) states an objective to "[d]evelop, implement and maintain programs to manage the use, handling, transportation, storage and disposal of harmful chemical, biological, and radioactive material . . .", while subsection (e) states an objective to "[d]evelop a program to safely collect and dispose of household hazardous wastes, including batteries, paints, household cleaners, and other harmful wastes generated by residential properties." Also, section 1812 recommends that the Benning Road facility operate as efficiently as possible, which will be assisted by the facility's renovation. It is also worth noting that nowhere in the Comprehensive Plan is it recommended that such use be discontinued or scaled back at Benning Road. Finally, the Commission considered the Council action in approving funding for the long-term capital improvements that require the rezoning proposed. The Commission surmises that in doing so, the Council must have viewed the continued long-term use of the site for solid waste transfer as consistent with the Comprehensive Plan.

Nevertheless, in order to ensure that the M designation does not lead to subsequent uses of the property that might be inconsistent with the Comprehensive Plan, the Commission has limited the duration of the designation to two years.

Public Hearing

The Commission held a public hearing on this case on February 27, 2003. A notice of public hearing was published in the *D.C. Register* on January 10, 2003.

Mr. Thomas Henderson, Solid Waste Administrator for DPW, testified as to the importance of the Benning Road facility to the District, and that it will soon be one of only two such facilities operating in the District.

At the hearing, it was discussed whether the proposed map designation should expire when the subject property is no longer used as a municipal waste transfer facility. However, the Commission ultimately rejected this proposal, providing instead for the automatic expiration of the map amendment after two years. The Commission recognized the importance of the facility, but was not convinced that the facility should be accommodated indefinitely, given the circumstances in the surrounding area.

The Office of Planning, in its report dated February 17, 2003, and through testimony at the hearing, stated its support for the zoning designation.

Proposed Rulemaking

The Zoning Commission voted to take proposed action at its regularly scheduled meeting held March 10, 2003. A notice of proposed rulemaking was published in the April 11, 2003, edition of the *D.C. Register*.

The chairman for ANC 7D and single member district commissioner for the subject property submitted a letter stating the ANC's support for the proposed map amendment. Because the letter did not establish that the position of the ANC was the result of a vote taken at a public meeting, with a quorum present, it is not entitled to great weight.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 429 of the District of Columbia Charter. NCPC, by report dated April 10, 2003, found that the proposed map amendment would not adversely affect the identified federal interests and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

The Office of the Corporation Counsel determined that this rulemaking meets its standards of legal sufficiency.

Final Rulemaking

Based upon the above, the Commission finds that the proposed amendment to the Zoning Map is in the best interest of the District of Columbia, consistent with the purpose of the Zoning

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Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the District of Columbia.

In consideration of the reasons set forth herein, the Commission hereby **APPROVES** the following amendment to the Zoning Map.

The amendment to the Zoning Map of the District of Columbia is as follows:

Parcel 0169/0111 of Reservation 343 – zone as M, provided that this designation shall expire two years after the publication in the *D.C. Register* of this final order establishing such a designation, that is, on _____.

Vote of the Zoning Commission taken at its public meeting on March 10, 2003, to **approve** the proposed rulemaking: 5-0-0 (Anthony J. Hood, Peter G. May, Carol J. Mitten, John G. Parsons, and James H. Hannaham to approve)

This order was adopted by the Zoning Commission at its public meeting on June 9, 2003, by a vote of 5-0-0 (John G. Parsons, Anthony J. Hood, Carol J. Mitten, Peter G. May, and James H. Hannaham to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on _____.